

From the streets to the courtroom: judicial electoral contestation



Malaysians are gearing up for heated polls in the 14th General Election (GE14). Prime Minister Najib Tun Razak and his party the United Malays National Organization (UMNO), in office since 1957, aim to perpetuate their tenure. Many do not fully realise, however, that for the past three years there have been intense battles in the courtrooms, which continue to cast an unconstitutional shadow over the election. Minimally, the legal challenges have raised serious questions about the fairness of the electoral process and the nature of political power in Malaysia.

When Malaysia's electoral reform process began in 2007, the focus was to head to the streets to draw attention to the country's uneven electoral playing field. Bersih (the Coalition for Clean Elections) moved from an opposition vehicle to a broad civil society movement. From 2011 the movement was led by lawyer Ambiga Sreenevasan, whose leadership brought out thousands of Malaysians to rallies and culminated in a People's Tribunal in 2013 outlining serious irregularities in that year's election, GE13. That year the chairmanship of Bersih was taken over by Maria Chin Abdullah, a social activist, who ironically spearheaded fierce legal challenges over the electoral

process until her resignation last month to stand as a candidate.

A broad range of stakeholders, including pro bono lawyers, opposition parties, state governments and, importantly, ordinary voters, have instituted an unprecedented number of legal challenges over electoral reform in Malaysian courts. While the legal cases were not able to halt the delineation process, they have provided obstacles to the Electoral Commission (EC) and exposed breaches in standards of electoral integrity, as detailed below. Given the complexities of the change in strategy from the streets to the courtroom and the fact that most of the cases have received limited media attention, this article focuses on how legal contestation is an integral part of GE14.

The table below summarises the legal cases over the past three years. Broadly the cases have involved three issues: 1, the content; and 2, the process of the delineation exercise; and 3, even more fundamentally, the power of different political institutions to make decisions on elections.

News reports to date has focused primarily on the content of the ‘front door’ delineation, based on the report submitted to parliament in March 2018. Concerns have rightly swirled around malapportionment (inequality in representation), gerrymandering (unfair drawing of boundaries) and the integrity of the electoral roll. One case, *Kuala Kuba Bharu Voters vs. EC*, has also touched on the ‘backdoor’ delineation, the non-transparent movement of voters between constituencies. Not only have these cases served to further mobilise the public over these concerns, with detailed documented studies by Bersih to show the unfairness of the delineation process, the discussion has also been put on the public record.

The detailing of the manipulation of the electoral system to advantage the incumbent has provoked an unprecedented number of objections by the public to the delineation (as detailed in the EC’s own report). Furthermore, the High Court decision in December 2017, *Selangor Government vs. EC*, has acknowledged that malapportionment and gerrymandering have taken place. This may seem like the obvious, but it serves to put on legal public record structural imbalances in the electoral system and is an acknowledgment within the system of the unfairness in the delineation.

Table: Legal Cases Involving Electoral Reform

Case	State	Status	Issues
<i>Sarawak State Assemblyman See Chee How vs EC</i> , Filed in 2015	Sarawak		